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ESA MANAGEMENT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SELAMAWIT EMBAYE, MARK
CORREA, THOMAS MITCHELL,
SANDRA PEREIRA, YOLANDA
SHIHEIBER, and ENREE SMITH,

Plaintiffs,

v.

ESA MANAGEMENT, LLC (DBA
“EXTENDED STAY AMERICA” and
“EXTENDED STAY HOTELS”), and
DOES 1 to 10 inclusive,

Defendants.

Case No. CV 14-03732 EMC

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Edward M. Chen
Courtroom 5, 17th Floor

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
 2 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
 3 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
 4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
 5 or of a Party's competitor.

6 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
 7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
 8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
 9 less restrictive means.

10 2.8 House Counsel: attorneys who are employees of a party to this action. House
 11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
 13 entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
 15 action but are retained to represent or advise a party to this action and have appeared in this action
 16 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

17 2.11 Party: any party to this action, including all of its officers, directors, employees,
 18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 20 Material in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation support services
 22 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
 23 organizing, storing, or retrieving data in any form or medium) and their employees and
 24 subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
 26 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 28 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material
 3 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 6 However, the protections conferred by this Stipulation and Order do not cover the following
 7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
 8 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
 9 publication not involving a violation of this Order, including (a) becoming part of the public record
 10 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 11 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 12 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
 13 Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 18 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
 20 time limits for filing any motions or applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 23 or Non-Party that designates information or items for protection under this Order must take care
 24 to limit any such designation to specific material that qualifies under the appropriate standards.
 25 To the extent it is practical to do so, the Designating Party must designate for protection only
 26 those parts of material, documents, items, or oral or written communications that qualify – so that
 27 other portions of the material, documents, items, or communications for which protection is not
 28 warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains Protected
 2 Material. If only a portion or portions of the material on a page qualifies for protection, the
 3 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 4 markings in the margins) and must specify, for each portion, the level of protection being
 5 asserted.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 7 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 8 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 9 impractical to identify separately each portion of testimony that is entitled to protection and it
 10 appears that substantial portions of the testimony may qualify for protection, the Designating
 11 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
 12 a right to have up to 21 days to identify the specific portions of the testimony as to which
 13 protection is sought and to specify the level of protection being asserted. Only those portions of
 14 the testimony that are appropriately designated for protection within the 21 days shall be covered
 15 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
 16 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
 17 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY.”

19 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 20 other proceeding to include Protected Material so that the other parties can ensure that only
 21 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 22 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 23 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
 24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 Transcripts containing Protected Material shall have an obvious legend on the title page
 26 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 27 pages (including line numbers as appropriate) that have been designated as Protected Material and
 28 the level of protection being asserted by the Designating Party. The Designating Party shall

1 inform the court reporter of these requirements. Any transcript that is prepared before the
 2 expiration of a 21-day period for designation shall be treated during that period as if it had been
 3 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 4 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 5 actually designated.

6 (c) for information produced in some form other than documentary and for any
 7 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 8 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 9 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions
 10 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
 11 identify the protected portion(s) and specify the level of protection being asserted.

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 13 designate qualified information or items does not, standing alone, waive the Designating Party’s
 14 right to secure protection under this Order for such material. Upon timely correction of a
 15 designation, the Receiving Party must make reasonable efforts to assure that the material is
 16 treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 21 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 23 original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 25 process by providing written notice of each designation it is challenging and describing the basis
 26 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 27 notice must recite that the challenge to confidentiality is being made in accordance with this
 28 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in

1 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
2 forms of communication are not sufficient) within 14 days of the date of service of notice. In
3 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
4 designation was not proper and must give the Designating Party an opportunity to review the
5 designated material, to reconsider the circumstances, and, if no change in designation is offered,
6 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
7 stage of the challenge process only if it has engaged in this meet and confer process first or
8 establishes that the Designating Party is unwilling to participate in the meet and confer process in
9 a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
12 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
13 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
14 process will not resolve their dispute, whichever is earlier. Each such motion must be
15 accompanied by a competent declaration affirming that the movant has complied with the meet
16 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
17 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
18 shall automatically waive the confidentiality designation for each challenged designation. In
19 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
20 time if there is good cause for doing so, including a challenge to the designation of a deposition
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be
22 accompanied by a competent declaration affirming that the movant has complied with the meet
23 and confer requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
27 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
28 file a motion to retain confidentiality as described above, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing Party's
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
7 the categories of persons and under the conditions described in this Order. When the litigation has
8 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
9 DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a location and
11 in a secure manner that ensures that access is limited to the persons authorized under this Order.

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
18 Bound" that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
21 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
23 reasonably necessary for this litigation and who have signed the "Acknowledgment and
24 Agreement to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, mock
27 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
28 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
 2 – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

3 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
 4 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
 5 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 6 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating
 7 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
 8 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
 9 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
 10 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
 11 identifies each person or entity from whom the Expert has received compensation or funding for
 12 work in his or her areas of expertise or to whom the expert has provided professional services,
 13 including in connection with a litigation, at any time during the preceding five years,¹ and (6)
 14 identifies (by name and number of the case, filing date, and location of court) any litigation in
 15 connection with which the Expert has offered expert testimony, including through a declaration,
 16 report, or testimony at a deposition or trial, during the preceding five years.

17 (b) A Party that makes a request and provides the information specified in the
 18 preceding respective paragraphs may disclose the subject Protected Material to the identified
 19 Expert unless, within 14 days of delivering the request, the Party receives a written objection
 20 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
 21 based.

22 (c) A Party that receives a timely written objection must meet and confer with the
 23 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
 24 agreement within seven days of the written objection. If no agreement is reached, the Party
 25

26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
 27 Expert should provide whatever information the Expert believes can be disclosed without violating any
 28 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
 the Designating Party regarding any such engagement.

1 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
 2 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court
 3 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the
 4 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
 5 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
 6 In addition, any such motion must be accompanied by a competent declaration describing the
 7 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
 8 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
 9 to approve the disclosure.

10 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
 11 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 12 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 14 LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that
 16 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"
 17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification shall
 19 include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue
 21 in the other litigation that some or all of the material covered by the subpoena or order is subject
 22 to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
 23 and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 25 Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the
 27 subpoena or court order shall not produce any information designated in this action as
 28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a

determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a

determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 12.4 Filing Protected Material. Without written permission from the Designating Party
4 or a court order secured after appropriate notice to all interested persons, a Party may not file in
5 the public record in this action any Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
7 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
8 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
9 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
10 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
11 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
12 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
13 79-5(e)(2) unless otherwise instructed by the court.

14 13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in section 4, each
16 Receiving Party must return all Protected Material to the Producing Party or destroy such
17 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
20 submit a written certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
27 product, and consultant and expert work product, even if such materials contain Protected
28

1 Material. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 DATED: January 28, 2015

5
6 /s/ Aaron Kaufmann
AARON KAUFMANN
XOCHITL LOPEZ
7 LEONARD CARDER, LLP
Attorneys for Plaintiffs

8 DATED: January 28, 2015

9 /s/ Lisa K. Horgan
10 LINDBERGH PORTER
MARY D. WALSH
11 LISA K. HORGAN
LITTLER MENDELSON, P.C.
12 Attorneys for Defendant
ESA MANAGEMENT, LLC

13
14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

15
16 DATED: 1/30/15

17 HONORABLE



EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have read
 in its entirety and understand the Stipulated Protective Order that was issued by the United States
 District Court for the Northern District of California on _____ [date] in the case of
Embaye, et. al. v. ESA Management, LLC, Case No. 14-CV-3732. I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
 I solemnly promise that I will not disclose in any manner any information or item that is subject
 to this Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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